

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.150 of 1994

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Nageshwar Bin, son of late Dashrath Bin, resident of village Chhota
Brahmpur, Police Station- Bhagwan Bazar, District- Saran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Navin Prasad Singh, Advocate
For the State : Ms. S.B. Verma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 21-11-2017

The instant appeal arises out of the the judgment of conviction dated 16.2.1994 and order of sentence dated 17.2.1994 passed by the 4th Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 16 of 1993 arising out of Bhagwan Bazar P.S. Case No. 155 of 1991 whereby the appellant Nageshwar Bin and accused Chhathi Lal Bin and Sukhdeo Bin have been convicted under Section 302/34 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for life and two months rigorous imprisonment for offence under Section 447 of the Indian Penal Code. This appellant has been further convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for seven years, however, no separate sentence has been awarded under Section 324 IPC. Accused Sukhdeo Bin has



further been convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for three months. However, all the sentences were directed to run concurrently.

2. The prosecution case in short is that on 31.7.1991 at 1.30 hours night the informant Jaidat Bind (PW-14) gave a fardbeyan, Ext. 4 before the Sub Inspector in the Surgical Ward at Bed No. 25, Sadar Hospital, Chapra stating therein that he used to rear fish along with Ambika Bin, son of Sheo Ratan Bind of village Chhota Brahmpur, P.S. Bhagwan Bazar and on 30.7.1991 at 7.00 PM he went to the house of Ambika Bin to ask his son Ram Raj Bin for catching the fish, and Ram Raj Bin ask the informant to wait, saying that he will go after taking meal. It is asserted that Doma Bin of village Jantola P.S. Ravilganj had come at the house of his cousin brother, Ambika Bin for catching fish and he was sitting at the door of Ambika Bin, when all of a sudden, Adalatb Bin, Nageshwar Bin, Chhathi Lal Bin and Sukhdeo Bin, all armed with lathi, Bhala and Chura, started assaulting them. It is further case of the informant that Adalat Bin assaulted Doma Bin with Bhala and injured him. Accused Chhati Lal Bin and Sukhdeo Bin gave indiscriminate lathi blows on him. Accused Nageshwar Bin assaulted Doma Bin with Chura in his thigh making him injured. When the informant intervened, then Nageshwar Bin assaulted



him by Chhura over his left shoulder and Sukhdeo Bin assaulted with lathi. As such, the informant fell flat crying out. The injured were taken to hospital on rickshaw. They came to know that Doma Bin died in the way. The informant also stated that in the hospital he saw Ram Raj Bin, Sheo Prasad Bin was admitted in the hospital and came to know that accused Chhathi Lal Bin assaulted Ram Raj Bin with Chhura (dagger). He further stated that he does not know who has assaulted Sheo Prasad Bin who himself revealed the name of the assailant. The motive of the occurrence is said to be rearing the fishes jointly. On the basis of the aforesaid fardbeyan Bhagwan Bazar P.S. Case No. 155 of 1991 dated 31.7.1991 was registered by the police under Sections 302, 323, 324, 307, 447/34 of the Indian Penal Code and started investigation.

3. On completion of the investigation, police submitted charge sheet under Sections 323, 324, 307, 302/34 IPC. On receipt of the charge sheet the Chief Judicial Magistrate, Chapra took cognizance and the case was committed to the Court of Sessions. The Sessions Court framed charges against the appellants and accused Chhathi Lal Bin and Sukhdeo Bin under Sections 302/34 and 447 of the Indian Penal Code. The appellant Nageshwar Bin has also been charged under Section 324 and 307 IPC whereas accused Sukhdeo Bin was further charged under Section 323 of the



Indian Penal Code. The appellant and others pleaded not guilty and as such they have been put on trial.

4. The prosecution has examined altogether 16 witnesses, namely, P.W.1 Dr. Manohar Thakur, P.W.2 Sheo Prasad Bin, P.W. 3 Ramraj Bin, P.W. 4 Rupan Bin, P.W. 5 Dr. Supresh Prasad, P.W.6 Gauri Bin, P.W.7 Rajdhari Singh, employee of the Malkhana who has brought the material, Ext. to the Court P.W. 8 Harihar Bin, P.W. 9 Prahalad Bin, P.W. 10 Smt. Sarswati Devi, PW 11. Smt. Munakka Bin, P.W. 12 Sheo Jagan Bin, P.W. 13 Birendra Bin who was tendered by the prosecution for cross-examination, P.W. 14 Jaidrath Bin, P.W. 15 Dr. Rajiv Kumar Singh, P.W. 16 Ram Kripal Prasad who is the IO of the case. In addition thereto documentary evidence was adduced on behalf of the prosecution, namely, seizure list of seized articles, inquest report, post mortem report, injury report, etc.

5. On behalf of the defence one witness D.W.1 Arun Kumar Sinha was examined who has proved the fardbeyan lodged at the instance of the appellant of this case being Bhagwan Bazar P.S. Case No. 156 of 1991 and the Exts. A and C, injury report of Janki Devi and the reason assigned by the doctor P.W. 5, Ext. A injury report of the appellant signed by the same Dr. P.W. 5 Ext. B is the formal FIR of Bhagwan Bazar P.S. Case No. 156 of 1991.



6. The trial court on the basis of the scrutiny of the evidence – oral and documentary, convicted the appellant for an offence under Section 302/34 and Section 447 of the Indian Penal Code as well as under Sections 307 and 324 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life under Section 302/34 IPC, two months rigorous imprisonment for offence under Section 447 and 7 years rigorous imprisonment for offence under Section 307 IPC. No separate sentence was awarded under Section 324 IPC.

7. Mr. Navin Prasad Singh, counsel for the sole appellant submitted that on account of dispute between the parties for fishery right altercation took place and both sides have sustained injury and as such there was case and counter case. He submitted that due to sudden fight both sides have sustained injury and as such even assuming that the entire prosecution case on its face value is accepted, it is not a case under Section 302 IPC rather under Section 304 IPC.

8. Mr. Singh submitted that there was quarrel and out of the quarrel between the two sides both sides assaulted each other with Chhura which caused injuries on both sides. The allegation against this appellant is that he had given Chhura blow on the right thigh and Sukhdeo Bin and Shiv Prasad Bin whereas Chhathilal



Bin had given lathi blow on the Panjara, back and abdomen. Referring to the injury sustained by the appellant in the altercation which was noticed by the trial court in paragraph-22. He submitted that this appellant has sustained four injuries caused by a weapon like Chhura and hard substance. He submitted with reference to the deposition of the IO that the IO has admitted in paragraph-18 of his deposition that the appellant was discharged from the hospital only on 29.8.1991 which means the appellant remained in hospital for treatment of his injuries for nearly one month and as such the injury on his person which led to his hospitalization and treatment as indoor patient for nearly one month indicate that the injury was serious in nature and as such Mr. Singh submitted that in the instant case the prosecution has not explained the injury caused on the appellant and as such the appellant deserves the benefit of non-explanation of the injuries on his person. Referring to the discussion of the trial court he submitted that in the trial court this issue was raised but the trial court brushed aside the argument on behalf of the defence referring to the deposition of PW-6 who explained the injury on the appellant saying that the villagers have pelted brick and as such appellant received such injury.



9. Mr. Singh submitted that once the prosecution has explained that the injury was caused due to brick pelting and the same is found absolutely false and contrary to the medical report, the prosecution story has to be disbelieved. He submitted that if no explanation is coming for the injury that may not be as vital as explanation of injury is found false and contradicted by the medical evidence. He submitted that admittedly in this case the appellant and his wife have sustained injury which is suggestive of the case that due to dispute as to fishing the altercation took place and both sides have assaulted each other with Chura and other weapon in sudden fight and as such the conviction of the appellant under Section 302/34 is not sustainable.

10. Ms. Shashi Bala Verma, appearing on behalf of the State has admitted the factual position that there was fight on account of fishing right and claim between the two sides and both sides have sustained injury in free fight and there was case and counter case. She has not been able to dispute the materials on the record and in particular the deposition of the IO that the injury sustained by the appellant was of serious nature and as such he remained in hospital for nearly one month. She has not been able to dispute the fact that there is no explanation on behalf of the prosecution as to the injury sustained by the appellant and his wife.



The kind of explanation furnished by P.W. 6 is not supported by the medical evidence. The injury on the person of the appellant was caused by a weapon like Chhura as per the opinion of the Doctor and not by bricks.

11. We have heard the parties and on consideration of the entire facts and circumstances of the case, we are of the considered view that there was case and counter case between the parties. The occurrence took place on account of dispute as to fishing and both sides have sustained injuries. Therefore, it cannot be a case under Section 302 IPC rather it falls under Section 304 Part-II IPC. The injury on both sides are caused by Chhura blow. The Chhura blow on the thigh of the deceased proved fatal whereas Chura blow on the vital part of the appellant although grievous but the appellants survived after treatment for nearly one month in the hospital. The attending facts and circumstances and injury on both sides indicate sudden fight.

12. In the totality of the fact situation we are of the considered view that the conviction of the appellant under Section 302 IPC is not sustainable rather it is a case for conviction under Section 304 IPC considering the fact that there was case and counter case and the appellant has also sustained grievous injuries and the incident is of 1991, i.e. 26 years ago and the appellant has



served the imprisonment for nearly four years at pre-trial stage and thereafter, we are of the view that ends of justice would be met if we convert the conviction from Section 302/34 IPC to Section 304/34 and reduce the sentences to the period already undergone.

13. We accordingly, partly allow the appeal. The conviction of the appellant under Section 302/34 is converted into under Section 304/34 IPC and the sentence is modified as to the period already undergone.

14. With the aforesaid modification in the judgment of conviction and order of sentence, the appeal stands partly allowed. Since the appellant is on bail, he is discharged of the liability of the bail bond.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.11.2017
Transmission Date	24.11.2017

